

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

PLAINTIFF PACITO; PLAINTIFF )  
ESTHER; PLAINTIFF JOSEPHINE; ) C25-00255-JNW  
PLAINTIFF SARA; PLAINTIFF ) SEATTLE, WASHINGTON  
ALYAS; PLAINTIFF MARCOS; )  
PLAINTIFF AHMED; PLAINTIFF ) March 4, 2025  
RACHEL; PLAINTIFF ALI; HIAS, ) 1:00 p.m.  
INC.; CHURCH WORLD SERVICE, )  
INC.; and LUTHERAN COMMUNITY )  
SERVICES NORTHWEST, ) Motion for  
Plaintiffs, ) Emergency  
Conference

v.

DONALD J. TRUMP, in his )  
official capacity as )  
President of the United )  
States; MARCO RUBIO, in his )  
official capacity as )  
Secretary of State; KRISTI )  
NOEM, in her official )  
capacity as Secretary of )  
Homeland Security; DOROTHY )  
A. FINK, in her official )  
capacity as Acting Secretary )  
of Health and Human )  
Services, )  
Defendants.

VERBATIM REPORT OF PROCEEDINGS  
BEFORE THE HONORABLE JAMAL N. WHITEHEAD  
UNITED STATES DISTRICT JUDGE

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## 1 APPEARANCES:

2 For the Plaintiffs: Melissa Keaney  
3 International Refugee Assistance  
4 Project  
5 P0 Box 2291  
6 Fair Oaks, CA 95628

7 Jonathan Patrick Hawley  
8 Shireen Lankarani  
9 Esme Aston  
10 Perkins Coie  
11 1201 3rd Avenue  
12 Suite 4900  
13 Seattle, WA 98101-3099

14 For the Defendants: August Flentje  
15 U.S. Department of Justice  
16 P.O. Box 868  
17 Ben Franklin Station  
18 Washington, D.C. 20044

1 THE CLERK: This is the matter of Pacito, et al.,  
2 versus Trump, et al., Cause No. C25-255, assigned to this  
3 court. Will counsel please rise and make their appearances  
4 for the record.

5 MR. HAWLEY: Good afternoon, Your Honor. Jonathan  
6 Hawley from Perkins Coie for plaintiffs. I'll let my Perkins  
7 Coie colleagues introduce themselves first.

8 MS. LANKARANI: Shireen Lankarani from Perkins Coie.

9 MS. ASTON: Esme Aston.

10 MR. HAWLEY: We're joined today by Melissa Keaney  
11 from the International Refugee Assistance Project. She'll be  
12 handling the argument today.

13 MS. KEANEY: Good afternoon, Your Honor.

14 THE COURT: Good afternoon.

15 MR. FLENJE: August Flenje with the Justice  
16 Department for the United States.

17 THE COURT: Hello, again, Mr. Flenje.

18 All right. So we are here on plaintiffs' request for an  
19 emergency conference, following the government's termination  
20 of some or all of the USRAP cooperation agreements.

21 Plaintiffs, you requested the hearing, so I'll hear from  
22 you first.

23 MS. KEANEY: Thank you, Your Honor. Again, Melissa  
24 Keaney for plaintiffs.

25 Plaintiffs requested this emergency hearing in order to

1 bring to the court's attention defendants' actions, which can  
2 be viewed as nothing other than an attempt to circumvent the  
3 relief that the court has ordered.

4 Your Honor had already held that defendants' attempt to  
5 withhold funding that's been duly appropriated for the U.S.  
6 refugee admissions program, or USRAP, is unlawful. And the  
7 only thing that has changed is that defendants can no longer  
8 claim their actions are temporary.

9 All the facts, including the timing and the nature of what  
10 the government has done here, suggests that this is an  
11 attempt to make an end run around this court's ruling, in  
12 advance of the written order that was issued on Friday.

13 Although defendants attempt to move the goalposts through  
14 this action, these termination notices, just like the  
15 suspension notices, reflect a policy decision to defund  
16 USRAP. And it would be appropriate for the court to extend  
17 relief as to the termination notices, as they are just an  
18 extension of this policy which the court has already found to  
19 be unlawful.

20 THE COURT: All right. Thank you, counsel.

21 Now, the terminations, do they constitute a separate  
22 agency decision, apart from the suspension of the contracts  
23 that we talked about last week?

24 MS. KEANEY: We think they're properly viewed as an  
25 extension of the prior decision the agency made to defund

1 U.S. Refugee Admissions Program. So maybe just the latest  
2 action in the implementation of that policy decision.

3 THE COURT: But as of the last hearing and in the  
4 complaint, termination was not at issue. I know that you  
5 argued that the suspension effectively was a termination.  
6 But as to an actual termination, that just wasn't a factual  
7 circumstance at the time, was it?

8 MS. KEANEY: That's correct. I think some of the  
9 fundamental facts remain the same, even if the labels the  
10 government is applying have changed. They decided to defund  
11 the USRAP. That's what has legal consequences for our  
12 clients. That's what matters under the *Bennett v. Spear*  
13 test, that's what we have challenged from the very beginning.  
14 And importantly, it has profound practical consequences for  
15 our clients. As Your Honor recognized, the organizational  
16 plaintiffs can ill afford to continue to have their funding  
17 frozen. Even since the termination notices were issued,  
18 there have been additional layoffs. Plaintiff HIAS has had  
19 to lay off almost another 200 members of their staff. So  
20 there are compounding irreparable harms that continue as a  
21 result of defendants' actions.

22 THE COURT: I'm with you that the analysis is going  
23 to track closely the same as the court's analysis when it was  
24 taking a look at the suspension of the contracts.

25 So tell me this. This later change in circumstance, I

1 mean, does it warrant a separate legal treatment and factual  
2 exploration from the court?

3 MS. KEANEY: If the court were to find it necessary,  
4 we're prepared to file supplemental pleadings to make clear  
5 that the -- to set out the events that postdate the filing of  
6 our complaint and make clear they are part and parcel of the  
7 claim that we brought against the funding suspension.

8 We think that the -- we are -- our supplemental pleading  
9 doesn't add any additional claims or any new arguments,  
10 because the arguments we made already extend just as equally  
11 to the termination notices. And we've brought a copy of the  
12 proposed supplemental pleading, if the court would like to  
13 see it.

14 THE COURT: And the government's response that was  
15 filed this morning, have you had a chance to review it?

16 MS. KEANEY: Yes, Your Honor.

17 THE COURT: Do you have any comment on anything  
18 that's raised in the response?

19 MS. KEANEY: I guess just to address the points  
20 around whether or not there's any sort of conflict between  
21 anything this court has ordered or could order, and  
22 additional cases, we think that the defendants are trying to  
23 confuse the issues. And the declaration that they submitted  
24 in connection with their response really focuses on USAID  
25 funding.

1 But the bottom line here is that we challenged the  
2 legality of their policy to defund USRAP. That's not an  
3 issue that's presented in the *AIDS* case, or any other case  
4 except for this case, and no other court has addressed or  
5 examined that issue, other than this court.

6 And it's clear now, with the termination notices, as  
7 plaintiffs have held all along, that the plan was to defund  
8 all resettlement programs in the United States. And all ten  
9 resettlement agencies have, in fact, received termination  
10 notices. That's confirmed by the government's filing.

11 THE COURT: All right. Thank you, Ms. Keaney.

12 MS. KEANEY: Thank you.

13 THE COURT: Mr. Flenje.

14 MR. FLENJE: May it please the court, as we noted in  
15 our short filing this morning, we think the proper avenue to  
16 challenge the terminations would be an amended complaint and  
17 supplemental PI motion. We're prepared to work with  
18 plaintiffs on a schedule for that.

19 As the court knows, we've also filed a notice of appeal  
20 and a stay motion with Your Honor. So this will be moving on  
21 a couple of tracks.

22 I'll note that the amended complaint -- a supplemental PI  
23 motion is what a court in the District of Columbia in a case  
24 called *U.S. Catholic Bishops*, that actually involves one of  
25 the resettlement coordinators in DDC. I will also flag that

1 plaintiffs are right, the ten domestic resettlement contracts  
2 were terminated. But the grants that work overseas to  
3 facilitate refugee entry, have not all been terminated. So  
4 those are -- a couple of those are in place to facilitate  
5 refugee entries and admissions to the U.S. at this point.

6 THE COURT: So tell me this: Why did the State  
7 Department issue termination notices to these resettlement  
8 agencies, the very day after the court issued its preliminary  
9 injunction dealing with a suspension of these --

10 MR. FLENJE: I think the timing primarily is related  
11 to the case in the District of Columbia. As I think we've  
12 explained in some of our pleadings, I don't know which ones,  
13 the Secretary issued the suspension and said: For 90 days --  
14 I'm going to take 90 days and look at all these and find out  
15 if they further agency priorities. The court in DDC enjoined  
16 that suspension. And then the choice was to -- funding would  
17 resume.

18 That sped up the Secretary's process, such that as the  
19 declaration that we both attached to our pleadings noted, was  
20 carried out in a matter of a couple weeks. And basically  
21 concluded on February 26th, which I think was right after the  
22 hearing here, and resulted in termination of most but not all  
23 of the refugee-related cooperative agreements.

24 THE COURT: I mean, that's a remarkable coincidence  
25 to me that the termination notices would be sent within



1 24 hours of the court's preliminary injunction. I mean, was  
2 the timing completely unrelated to the court's preliminary  
3 injunction?

4 MR. FLENJE: Well, the timing was related to speeding  
5 up review because of the other litigation. So I would say it  
6 was related to the other litigation.

7 THE COURT: Counsel, you made a very big showing,  
8 both at the hearing and in the briefing, that this funding  
9 suspension was only temporary. And the very next day, the  
10 funding suspension becomes a termination. What am I to make  
11 of that?

12 MR. FLENJE: The Secretary's "ALDAC," it was called,  
13 that was the subject of this litigation, was a temporary  
14 suspension, a 90-day suspension. That's correct. That's  
15 what plaintiffs challenged in their PI motion. That was the  
16 facts as they were a week ago. And that was what we were  
17 talking about.

18 THE COURT: I guess what I'm driving at, if there is  
19 a process that was already in the works of an actual  
20 termination of the contracts as opposed to merely suspension,  
21 why didn't you tell me that last week?

22 MR. FLENJE: I may be wrong, but I believe we  
23 submitted information on the AIDS vaccine. I mean, we  
24 pressed this court to hold its hand because of the ongoing  
25 litigation in that case, which involved multiple court

1 orders. One of which has now gone to the U.S. Supreme Court,  
2 where the U.S. Supreme Court issued a stay of an order to pay  
3 a large amount of money, which would include money that  
4 overlaps with the case here.

5 So we were very cognizant of that litigation, and I don't  
6 think we withheld any information about that.

7 THE COURT: All right. The USRAP statutory scheme,  
8 it's a complicated one and an interconnected one. And the  
9 resettlement agencies play an important role in the process  
10 by congressional design.

11 Can the government carry out the rest of the preliminary  
12 injunction order, without the resettlement agencies?

13 MR. FLENJE: The order -- yes. We have advised the  
14 State Department of the order. They have maintained, for  
15 example, their funding contract with the UN's International  
16 Office of Migration, which is the entity that actually funds  
17 sort of the travel to the United States.

18 One of the plaintiffs in this case has a contract that has  
19 not been terminated, that covers Africa area. So there are  
20 -- some of the overseas-facing agreements are in place, which  
21 would allow that entry to be possible.

22 THE COURT: And the domestic services?

23 MR. FLENJE: The domestic services, as plaintiffs  
24 noted, they have all been terminated. Our view is that the  
25 refugee statute, Section 1522, doesn't require those

1 services, it's an option. And the Secretary has reviewed  
2 those agreements and determined that they do not serve agency  
3 priorities.

4 We believe that they would -- that is a decision, it's  
5 obviously an agency decision that could be challenged. But  
6 as we said, we'd need an amended complaint.

7 THE COURT: Which contracts were terminated? Was it  
8 all ten resettlement agencies that had their contracts  
9 terminated?

10 MR. FLENJE: Ten that operate the services in the  
11 United States.

12 THE COURT: Was there any prior notice given of the  
13 terminations?

14 MR. FLENJE: Well, each of them received a notice of  
15 the termination. That was the notice.

16 THE COURT: Prior notice.

17 MR. FLENJE: No, they didn't get prior notice. They  
18 got notice that their agreement was being terminated, under  
19 very clear law, 2 CFR 200.340, which in our view sort of  
20 underscores that this is not a mandatory program, this is a  
21 discretionary program that the Secretary controls.  
22 Obviously, our view that you rejected last week, was the  
23 refugee entries is subject to the President's control.

24 THE COURT: That's a good segue to the question I  
25 had. I mean, what authority are you operating under in

1 canceling the cooperative agreements in immediate fashion,  
2 without notice?

3 MR. FLENJE: Well, if you look at 2 CFR 200.340,  
4 which is a standard contract term, it goes -- again, the  
5 cooperative agreements are not in the record, and this  
6 court's ruling is global. So it applies to a lot of  
7 plaintiffs that are not here and cooperative agreements that  
8 really couldn't easily be in the record.

9 But 2 CFR 200.340 says: Every agreement -- the agreements  
10 that included, and it's all of them -- it can be terminated  
11 by the department, to the greatest extent authorized by law,  
12 if the award no longer effectuates the program goals or  
13 agency priorities.

14 THE COURT: Okay. And this same CFR, it's both  
15 overseas and domestic?

16 MR. FLENJE: That would apply to all the cooperative  
17 agreements. I haven't studied each and every one of them,  
18 I'll be frank. But the ones that we've seen related to the  
19 plaintiffs in this case, all include that provision. And I  
20 don't think plaintiffs dispute that.

21 THE COURT: All right.

22 Now, the termination notices mention agency priorities.  
23 That's what's referenced in at least the ones before the  
24 court. How do those differ from the priorities mentioned in  
25 the suspension notices? Are they one and the same?

1 MR. FLENJE: Well, if I recall, the suspension was  
2 designed so that Secretary Rubio could evaluate, you know,  
3 all this money going out the door, and determine if it did  
4 serve agency priorities. That was designed to be a process  
5 that would last 90 days. Obviously, it happened much quicker  
6 than that, given various court orders.

7 THE COURT: All right. Has the State Department or  
8 the Department of Homeland Security resumed processing any  
9 refugee applications or entries at this point?

10 MR. FLENJE: There's been directions to resume that,  
11 that went out as soon as this court's order issued. I don't  
12 have any further information on the details there. It's a  
13 complex operation, as you're familiar with and as plaintiffs  
14 know. But it has been resumed.

15 THE COURT: Travel arrangements for plaintiffs like  
16 plaintiff Pacito?

17 MR. FLENJE: Again, I don't know. Well, plaintiffs  
18 can speak to Mr. Pacito. I don't know what kind of travel  
19 arrangements have been resumed.

20 THE COURT: And on the issue of reimbursements for  
21 work already performed by the resettlement agencies, can you  
22 give me an update on that?

23 MR. FLENJE: Some of that money has been paid. None  
24 of the policies challenged presume to halt that. And the  
25 intent of the government is to -- they're going to review

1 those, but the plan is, there's no reason they wouldn't be  
2 paid at this time; unless something comes up in the review.

3 THE COURT: Do you have a sense of a timeline for  
4 this review and repayment?

5 MR. FLENJE: I'm sorry, Your Honor, I don't.

6 Again, that brings us back to the D.C. litigation, where a  
7 court ordered a very quick repayment of billions of dollars.  
8 The Supreme Court had to step in. It will move forward, but  
9 I don't know the timeline. And obviously it's tied with a  
10 lot of different requests for repayment for past services.

11 THE COURT: All right. Thank you, counsel. Is there  
12 anything else that you'd like to tell me that wasn't in the  
13 brief response that was filed this morning?

14 MR. FLENJE: No, I don't think there's anything else.  
15 But thank you. Happy to answer your questions.

16 THE COURT: Ms. Keaney, please.

17 MS. KEANEY: A couple of points, Your Honor.

18 I first just want to note that the regulation that  
19 defendants rely upon for the termination notices says, "They  
20 may be terminated to the extent authorized by law." But as  
21 Your Honor has already found, defunding USRAP is contrary to  
22 law so it cannot be authorized.

23 I also wanted to point out that while defendants maintain  
24 that they have not terminated the RSC Africa's cooperating  
25 agreement, it is still subject to a suspension notice which

1 Your Honor has found unlawful.

2 No money has been flowing to keep operations in that  
3 center. In fact, plaintiff CWS has not received any money,  
4 not one penny since this court issued its order.

5 I also wanted to address defendants' point that their  
6 position is that resettlement services are not required under  
7 the statute.

8 Your Honor already found that the agencies are required to  
9 administer those benefits, so long as appropriations are  
10 made, and they have been.

11 And there is no indication that defendants have made any  
12 sort of way forward to provide those benefits, that it's been  
13 almost 50 years' history of the resettlement agencies  
14 providing those benefits.

15 I also wanted to note that it's -- the government's  
16 declaration that was filed last night with their motion to  
17 stay, strongly suggests that they haven't taken any steps to  
18 implement this court's injunction. And I think defense  
19 counsel wasn't able to specify any steps that have been  
20 taken. In paragraph 2 of that declaration that was  
21 submitted, the declarant explains that he submits it in order  
22 to, "Explain why taking actions consistent with the  
23 injunction will result in irreparable harm," suggesting that  
24 they haven't taken any such actions so far.

25 And the agency, of course, very quickly implemented the

1 suspension in less than 24 hours, and set out the steps that  
2 they took and the correspondence the State Department sent to  
3 the resettlement agencies, explaining the steps that they  
4 took to implement the suspension. And we think that those  
5 steps must be undone and the government should be required to  
6 show that they have taken steps to undo those actions.

7 That would, as Your Honor noted, I think include resuming  
8 refugee processing and all the predeparture activities that  
9 were suspended, rebooking travel for those who had their  
10 travel canceled. And that's a time-sensitive issue, Your  
11 Honor, because plaintiffs, like plaintiff Pacito, his medical  
12 exam is set to expire on March 25th. If he's unable to  
13 travel before that date, then that step will have to be  
14 redone and he'll face additional delays.

15 None of the plaintiffs in the case have received any sort  
16 of communications that suggest that their applications have  
17 resumed processing, or that there's any sort of effort to,  
18 for example, rebook travel for the many thousands of refugees  
19 who had their travel canceled.

20 So we would ask that the court require defendants to  
21 report on the specific steps that they've taken to implement  
22 the injunction, maybe by early next week. And also request  
23 that the parties be ordered to submit a joint status report  
24 sometime shortly thereafter, so that it would provide another  
25 opportunity for defendants to explain what steps they've



1 taken, and also for plaintiffs to report on what we're seeing  
2 in terms of implementation.

3 THE COURT: All right. Thank you, counsel.

4 MS. KEANEY: Thank you, Your Honor.

5 THE COURT: All right. The timing of the  
6 government's decision to terminate the contracts of the  
7 resettlement agencies, just one day after the court issued  
8 its preliminary injunction, raises serious concerns about  
9 whether these actions are designed to circumvent the court's  
10 ruling.

11 Now, nevertheless, the court's preliminary injunction did  
12 not discuss actual termination of the resettlement agency  
13 contracts. That just was not the factual circumstance before  
14 the court, at the time of the preliminary injunction motion,  
15 or contained within the pleadings. So it was not part of the  
16 record before the court.

17 So the court does not read its injunction so broadly as to  
18 state that it expressly prohibited defendants from canceling  
19 the contracts. Now, it seems to me that the termination  
20 notices constitute a new agency action requiring separate  
21 legal analysis and updated pleadings.

22 That said, the court's careful APA analysis regarding  
23 contract suspensions will likely operate with equal force,  
24 when examining these terminations. And based on what I've  
25 heard in court today, the same legal deficiencies, failure to

1 provide a reasoned explanation, a disregard for statutory  
2 mandates, perhaps arbitrary decisionmaking that rendered the  
3 suspensions unlawful, likely unlawful, are likely present in  
4 what looks to be hasty terminations.

5 So here's how we'll proceed: I'm going to grant  
6 plaintiffs leave to amend their pleadings. Counsel, I think  
7 I heard you mention that you've already got the amended  
8 pleading ready to go. We'll need updated briefing as to the  
9 injunctive relief being sought and the scope of the  
10 injunction, to what extent it should be modified, if any.

11 I can certainly set a schedule. I read the government's  
12 brief this morning saying that they would work cooperatively  
13 and in good spirits to come up with a mutually agreeable  
14 briefing schedule. So I will give the parties an opportunity  
15 to hash out the schedule. But I'd like for you to e-mail my  
16 courtroom deputy, before you leave the courthouse, as to what  
17 that schedule will be. If you can't agree, I will set the  
18 schedule. I've already got it in mind. But I want to at  
19 least give you the opportunity to say your piece as to what  
20 it might look like.

21 Ms. Keaney, your point about status reports is a good one.  
22 I'm going to order the government to issue a status report as  
23 of next Monday. There will be an order, a minute order that  
24 will follow that will put some details as to what that status  
25 report will entail. I also like the idea of a joint status

1 report to get the plaintiffs' take as to compliance.

2 So a schedule for that will be outlined in the order to  
3 follow. We've got the motion to stay, that's currently  
4 pending. I'm inclined to follow our district's standard  
5 cadence for the briefing schedule on this one. So the motion  
6 is not ripe yet. So I'm not going to express any opinion or  
7 render any sort of decision today on the motion to stay.

8 All right. Is there anything else to discuss?

9 MS. KEANEY: Just a clarification, Your Honor. On  
10 the preliminary injunction briefing, this is supplemental  
11 briefing, I just want to ensure that this isn't an  
12 opportunity for defendants to relitigate issues that have  
13 been decided. This is just specifically about the  
14 termination notices; is that correct?

15 THE COURT: That's correct. I mean, you're going to  
16 be the moving party, you're updating your brief. I'm not  
17 going to cabin the scope of the opposition brief that they  
18 are going to submit. If they want to talk about issues that  
19 are settled, I think that's folly on their part, but I'm not  
20 going to issue any sort of ruling, so to speak, limiting what  
21 they can discuss in their opposition.

22 MS. KEANEY: Thank you.

23 THE COURT: All right.

24 Mr. Flenje, anything?

25 MR. FLENJE: No, thank you. But thanks.

1 THE COURT: All right.

2 With that, we're adjourned.

3 (Adjourned.)

4

5 C E R T I F I C A T E

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7

8 I certify that the foregoing is a correct transcript from  
9 the record of proceedings in the above-entitled matter.

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12

13 */s/ Debbie Zurn*

14 DEBBIE ZURN  
15 COURT REPORTER

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